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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,209	12/04/2003	Homero Ramirez Tobias	224387	8004
23460	7590	09/05/2006		
LEYDIG VOIT & MAYER, LTD TWO PRUDENTIAL PLAZA, SUITE 4900 180 NORTH STETSON AVENUE CHICAGO, IL 60601-6780			EXAMINER GREEN, ANTHONY J	
			ART UNIT 1755	PAPER NUMBER

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/728,209

Applicant(s)

RAMIREZ TOBIAS ET AL.

Examiner

Anthony J. Green

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This office action is in response to the amendment submitted on 13 July 2006. Currently claims 1, 3 and 5 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Specification No. 08-217519 for the reasons set forth in the previous office action and which are herein incorporated by reference.

Applicant argues that the patent discloses a covering to protect concrete or construction material and not a concrete-based floor or wall covering with antibacterial activity as claimed in the instant application and that the patent does not disclose any of the microbicidal agents required by the claims.

To these arguments the examiner respectfully disagrees. It is unclear as to how applicant can argue that the reference does not teach a concrete-based floor or wall covering with antibacterial activity when the reference teaches a cement for protecting the inner and outer surfaces of a wall. Therefore it is a concrete based wall covering. As for the types of antimicrobial agents the reference teaches the use of quaternary

Art Unit: 1755

ammonium compounds, phenols and organic metal system compounds as the antimicrobial agent (see paragraph [0011]). While it does not specifically teaches the same types it broadly teaches compounds that encompass those instantly claimed. That is, the quaternary ammonium compound of the reference renders obvious the use of alkyl dimethyl benzyl ammonium chloride; the phenols of the reference renders obvious the use of 2,4,4'-trichloro-2'-hydroxyphenol and sodium o-phenylphenate tetrahydrate; and the organic metal system compound renders obvious the use of an organotin compound. Absent evidence showing otherwise as applicant has not shown that the particularly claimed compounds produce unexpected results. As for the amounts recited in claim 3, while the reference does not teach the formation of a concrete composition having the claimed amounts it would have been obvious for one of ordinary skill in the art to utilize any known concrete composition without producing any unexpected results absent showing otherwise. That is, applicant's concrete composition is made up of known components and it is known in the art to vary the amounts of the components depending on what is needed or desired. Accordingly the instant claims are rendered obvious by the reference.

4. Claims 1, 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Specification No. 08-225415 for the reasons set forth in the previous office action and which are herein incorporated by reference.

Applicant argues that the patent discloses a covering to protect concrete or construction material and not a concrete-based floor or wall covering with antibacterial

activity as claimed in the instant application and that the patent does not disclose any of the microbicidal agents required by the claims.

To these arguments the examiner respectfully disagrees. It is unclear as to how applicant can argue that the reference does not teach a concrete-based floor or wall covering with antibacterial activity when the reference teaches a cement for protecting the inner and outer surfaces of a wall. Therefore it is a concrete based wall covering. As for the types of antimicrobial agents the reference teaches the use of quaternary ammonium compounds, phenols and organic metal system compounds as the antimicrobial agent (see paragraph [0011]). While it does not specifically teach the same types it broadly teaches compounds that encompass those instantly claimed. That is, the quaternary ammonium compound of the reference renders obvious the use of alkyl dimethyl benzyl ammonium chloride; the phenols of the reference renders obvious the use of 2,4,4'-trichloro-2'-hydroxyphenol and sodium o-phenylphenate tetrahydrate; and the organic metal system compound renders obvious the use of an organotin compound. Absent evidence showing otherwise as applicant has not shown that the particularly claimed compounds produce unexpected results. As for the amounts recited in claim 3, while the reference does not teach the formation of a concrete composition having the claimed amounts it would have been obvious for one of ordinary skill in the art to utilize any known concrete composition without producing any unexpected results absent evidence showing otherwise. That is, applicant's concrete composition is made up of known components and it is known in the art to vary the amounts of the components

depending on what is needed or desired. Accordingly the instant claims are rendered obvious by the reference.

Conclusion

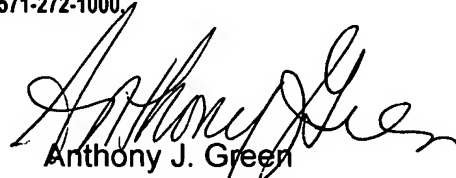
5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony J. Green whose telephone number is 571-272-1367. The examiner can normally be reached on Monday-Thursday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Anthony J. Green
Primary Examiner
Art Unit 1755

ajg
August 29, 2006